

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ALVIN D. CARSON,

)

Plaintiff

)

v.

)

No. 3:06-cv-329

PEPSI BOTTLING GROUP,

)

Defendant

)

MEMORANDUM AND ORDER

Currently pending is plaintiff's motion for leave to appeal *in forma pauperis* pursuant to Rule 24, Federal Rules of Appellate Procedure. An appeal cannot be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). An appeal is not taken in good faith if, judged by an objective standard, the appeal raises issues that are frivolous. *Coppedge v. United States*, 369 U.S. 438 (1962). An appeal is frivolous if it is contrary to "proof ... sufficient as a matter of law" to support the judgment. *United States v. Maines*, 462 F.Supp. 15, 18 (E.D. Tenn. 1978).

In the instant case, the record reveals that plaintiff admits in his deposition that he knew the requirements for obtaining FMLA leave but did not comply with them. Further, he also admits that the doctor's certification that he presented to the defendant did not indicate that the plaintiff needed time off work because of a serious medical condition, but rather that plaintiff's condition was such that he was fully capable of returning to his normal work. Under the circumstances, any FMLA claim, which is the only claim brought in this action, would be frivolous. Accordingly, plaintiff's motion for leave to appeal *in forma pauperis* [Court File #25] is hereby DENIED.

E N T E R :

s/ James H. Jarvis

UNITED STATES DISTRICT JUDGE